

## **EMPLOYEE STATUS DETERMINATION**

### **Genesee Valley Transportation Company, Inc.**

This is the determination of the Railroad Retirement Board concerning the status of the officers and employees of Genesee Valley Transportation Company, Inc. (Genesee) under the Railroad Retirement Act (45 U.S.C. §231 et seq.) (RRA) and the Railroad Unemployment Insurance Act (45 U.S.C. §351 et seq.) (RUIA). Since a majority of the Board finds that these individuals should be treated as employees of railroads covered under those Acts, the Board does not reach the status of Genesee.

Genesee is a holding company that owns five railroads: (1) Mohawk, Adirondack & Northern Railroad Corporation (BA No.3286); (2) Lowville & Beaver River Railroad (BA No.3215); (3) Depew, Lancaster & Western Railroad Co., Inc. (BA No.3275); (4) the Delaware-Lackawanna Railroad Co. (BA No.2260); and (5) the Genesee & Mohawk Valley Railroad. Genesee began operations in August 1993, and provides all of its services, consisting of managerial and technical advice, to those five railroads and derives all of its revenue from rail-connected service. In addition to its officers, Genesee had three employees as of January 31, 1995, all of whom work in positions related to the operation of the rail carriers and one of whom works part-time as an engineer and conductor on property owned by a railroad. Mr. Louis Andolora, Accounting Coordinator for Genesee, in a letter of March 11, 1992, states that employees of Genesee will be working alongside railroad employees.

Genesee's officers are David J. Monte Verde, President; Charles J. Riedmiller, Senior Vice President, Marketing/CFO; Jeffrey P. Baxter, Senior Vice President of Operations; Michael D. Thomas, Vice President Engineering/Acquisitions; and John S. Herbrand, Secretary/General Counsel. These same men are the directors of Genesee and also hold the same capacity as officers and directors in the Depew, Lancaster & Western Railroad Co., the Mohawk Adirondack & Northern Railroad Co., the Lowville & Beaver River Railroad Co., Inc., and the Delaware-Lackawanna Railroad. These same men also collectively own one hundred (100%) percent of Genesee's stock. (See ICC Finance Docket No. 32170, Petition for Exemption.)

Section 1(b) of the Railroad Retirement Act and section 1(d) of the Railroad Unemployment Insurance Act both define a covered employee as an individual in the service of an employer for compensation. Section 1(d)(1) of the RRA further defines an individual as "in the service of an employer" when:

(i) (A) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or (B) he is rendering professional or technical services and is integrated into the staff of the employer, or (C) he is rendering, on the


**Genesee Valley Transportation Company, Inc.**


property used in the employer's operations, personal services the rendition of which is integrated into the employer's operations; and


(ii) he renders such service for compensation \* \* \*.

Section 1(e) of the RUIA contains a definition of service substantially identical to that above, as do sections 3231(b) and 3231(d) of the RRTA [26 U.S.C. §§ 3231(b) and (d)].

The record establishes that Genesee's officers and other employees perform services essential to the operations of the rail carriers. Accordingly, it is the determination of the majority of the Board, that these individuals are also employees of the affiliated rail carriers to the extent of the service rendered.

  
Glen L. Bower

  
V. M. Speakman, Jr. (Concurring  
opinion attached)

  
Jerome F. Kever

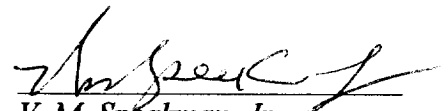
**CONCURRING OPINION OF  
V. M. SPEAKMAN, JR.  
ON EMPLOYER STATUS DETERMINATION OF  
GENESEE VALLEY TRANSPORTATION COMPANY, INC.**

*I agree with the determination that officers of Genesee Valley Transportation Company, Inc., (Genesee) and employees performing services for its affiliated railroads should be covered under the Railroad Retirement Act and the Railroad Unemployment Insurance Act (the Acts). However, I would also consider these individuals to be employees of Genesee itself, and that Genesee should be a covered employer as well.*

*As the majority of the Board points out, Genesee is a holding company that owns five railroads and provides all of its service to those five, deriving all of its revenues from rail connected service. Furthermore, the same five individuals who own Genesee, serve as Genesee's officers and directors, as well as directors of four of the five railroads that Genesee owns. Therefore, both Genesee and the four railroads are controlled by the same group of five individuals. Accordingly, it should be undisputed that Genesee is under common control with four of its railroad affiliates (especially considering their common interests and the fact that individuals acting as directors of one entity would not necessarily have separate interests when acting for another entity), and is providing service in connection with railroad transportation.*

*Following the majority's determination in this case would require that each Genesee employee must literally be carried on up to five rail carrier affiliate payrolls. Moreover, I don't agree that the employees in question should be covered only to the extent that they perform work for the rail affiliates. All services should be covered, since they should be considered employees of a covered entity.*

*For the reason stated, it is my position that Genesee should be an employer covered under the Acts effective August 1, 1993, the first day in which it began to provide managerial and technical advice to its affiliates.*

  
V. M. Speakman, Jr.

8/16/96  
Date